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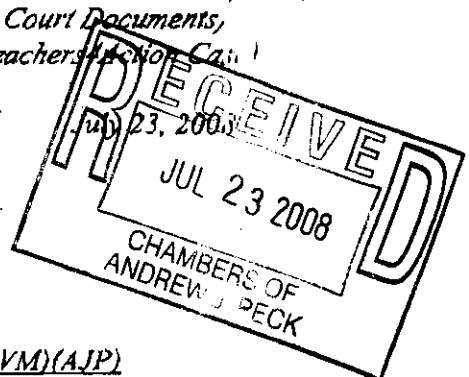
# EDWARD D. FAGAN ESC

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Via Fax (212) 805-7933

Honorable Andrew J. Peck, USMJ  
United States District Court  
Southern District of New York  
500 Pearl Street, Chambers  
New York, NY 10007



*Re: Teachers4Action et al v. Bloomberg et al. 08-cv-548 (VM)(AJP)*

Honorable Judge Peck:

As the Court knows, I am Plaintiffs' counsel in this matter.

Thank you for today's call from Chambers inquiring about Plaintiffs' response to the Motions to Dismiss filed by New York City Defendants and Union Defendants.

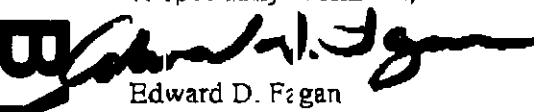
It was Plaintiffs' understanding that the procedure established at the May 1, 2008 Conference, was that Plaintiffs were going to wait to see the Motions first and then ask for more time, if necessary other than the normal two weeks. *See highlighted except from page 28 attached*

Plaintiffs have now had that time. Plaintiffs' therefore request that they be given until August 25<sup>th</sup> to respond to the Motions. The reasons include the fact that (i) the Motions are voluminous and rather than there being consolidated briefs, Plaintiffs must respond to separate briefs by each of the Defendant groups, (ii) it is taking a little longer than expected to coordinate with Plaintiffs' expert(s) for the preparation of responsive Declarations, and (iii) many Plaintiffs are out of town during the summer vacation and therefore there is only limited ability to get their input and assistance so Declarations and responsive arguments can be prepared and filed.

In accordance with Judge Marrero's July 17, 2008 Letter Endorsement, Plaintiffs will communicate with Defendants' counsel and will propose a Supplemental Briefing Schedule Order that will include (i) the time for Defendants' reply, if any, to Plaintiffs Response on the Motions to Dismiss and (ii) a schedule for Plaintiffs' Cross Motion, Defendants' Response and Plaintiffs' Reply related to the July 2008 Agreement between the Department of Education and the Union and the issues presented therein and their relevance to this case. *See Doc. 84*

As always, Plaintiffs thank the Court for its continued consideration in this regard.

Respectfully submitted,

  
Edward D. Fagan

EDF/lst

**MEMO ENDORSED 7/23/08**

Attachment - Excerpts from May 1, 2008 Conference - 2 pages dismissed, not AMT, facing tomorrow  
Cc: Blanche Greenfield Esq. - NYC Defendants - Fax (212) 788-8877  
Charles Moerdler Esq. - Defendants UFT, Weingarten & Combier - Fax (212) 805-6033

Defendants would be represented by 2nd year law students. Defendants would be represented by 2nd year law students. Defendants would be represented by 2nd year law students.

SO ORDERED:

  
Hon. Andrew Jay Peck  
United States Magistrate Judge

BY FAX

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

3 TEACHERS4ACTION, et al..

4 Plaintiffs,

5 v. 08 Civ. 548 (V)

6 MICHAEL G. BLOOMBERG, et al..

Conference

7 Defendants.

8 -----x

New York, N.Y.

May 1, 2008

4:00 p.m.

10 Before:

11 HON. ANDREW J. PECK

12 Magistrate Judge

13 APPEARANCES

15 EDWARD D. FAGAN, ESQ.  
16 Attorney for Plaintiffs

17 MICHAEL A. CARDODO  
18 Corporation Counsel for the City of New York  
19 Attorney for City Defendants  
BLANCHE GREENFIELD  
20 Assistant Corporation Counsel

21 STROOCK & STROOCK & LAVAN LLP  
22 Attorneys for Defendant UFT  
CHARLES G. MOERDLER, ESQ.  
DINA KOLKER, ESQ.

23 ADAM S. ROSS, ESQ.  
24 Attorney for Defendant UFT

1 Marreno even happier, since at this point the motion to dismiss  
2 goes to him. He may retaliate by sending it to me for a report  
3 and recommendation, but I'm just here to serve.

4 Do you know now whether you'll need more than the  
5 normal two weeks to respond, or do you want to wait until you  
6 see the motions and ask for more time at that point?

7 MR. FAGAN: I'd like to see the motions first, your  
8 Honor.

9 THE COURT: In the event that the complaint comes in  
10 earlier than June 2, you'll have 30 days from whenever it is to  
11 respond. If Mr. Fagan and his clients move faster, that will  
12 just give you more time to deal with the motion. But these are  
13 the outside dates.

14 Since discovery is still going to be stayed at this  
15 point, what else do we need to do?

16 MR. FAGAN: Actually, your Honor, I'd like to address  
17 that issue of discovery being stayed. The Court had said once  
18 before that discovery was stayed until all the parties were in.  
19 If necessary, I'll make a formal application for limited  
20 discovery. I think there are things that we could do in order  
21 to assist in preparing for the motion to dismiss and our  
22 responses to the motion to dismiss.

23 THE COURT: Motions to dismiss are based on the  
24 pleadings. However many smoking guns you find in their  
25 documents or whatever they would find in yours can't be

**FAX TRANSMITTAL SHEET**

**ANDREW J. PECK  
UNITED STATES MAGISTRATE JUDGE  
UNITED STATES DISTRICT COURT**

Southern District of New York  
United States Courthouse  
500 Pearl Street, Room 1370  
New York, N.Y. 10007-1312

**Fax No.: (212) 805-7933  
Telephone No.: (212) 805-0036**

**Dated:** July 23, 2008

**Total Number of Pages:** 4

| <b>TO</b>                 | <b>FAX NUMBER</b>            |
|---------------------------|------------------------------|
| Edward D. Fagan, Esq.     | 646-304-6446 or 646-417-5558 |
| Blanche Greenfield, Esq.  | 212-788-8877                 |
| Charles G. Moerdler, Esq. | 212-806-2647                 |
| Dina Kolker, Esq.         | 212-806-2606                 |
| Alan M. Klinger, Esq.     | 212-806-7818                 |

**TRANSCRIPTION:**

**MEMO ENDORSED 7/23/08**

Extension request was to be made before the time expired, not after. Plaintiffs' opposition papers are due 8/6 – more than 4 weeks is more than enough. And since it is a motion to dismiss, not for SJ, I see no reason why affidavits would be appropriate. Defendants' reply papers will be due 8/20. As to the "cross-motion" to enforce, do what you want, but I will not address it until after I address the motion to dismiss.

**Copy to: Judge Victor Marrero**